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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

BEFORE THE

Federal Communications Commission

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In the Matter of: :

Docket Number:

BROCKPORT, NEW YORK :

92-61

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DATE: June 16, 1992

VOLUME: 1

PLACE: Washington, D.C.

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1 BEFORE THE FEDERAL COMMUNICATIONS COMMISSION

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3 In the Matter of: : Docket No.

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6 The above-entitled matter came on for
7 conference pursuant to Notice before Richard L. Sippel,
8 Administrative Law Judge, at 2000 L Street, Northwest,
9 Hearing Room One, Washington, D.C., Tuesday, June 16,
10 1992 at 9:00 a.m.

11 APPEARANCES:

12 On Behalf of LRB Broadcasting:

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P R O C E E D I N G S

(Time Noted: 9:04 a.m.)

JUDGE RICHARD SIPPEL: On the record.

This is a pre-hearing conference that was set by my order 92M-473. I'll ask counsel to please note their appearances at this time, starting with Bureau counsel.

MR. GOLDSTEIN: Norman Goldstein.

JUDGE SIPPEL: Good morning, Mr. Goldstein.

MR. GOLDSTEIN: Good morning, Judge.

JUDGE SIPPEL: And on behalf of LRB?

MR. GILLICK: Good morning, Your Honor. Dan Gillick of LRB Broadcasting.

JUDGE SIPPEL: Mr. Gillick, good morning. And on behalf of David Wolfe?

MR. CARR: Richard Carr, Your Honor.

JUDGE SIPPEL: Mr. Carr.

All right. I notice that counsel Mr. Stanley Amerand, on behalf of Zenitram, is not here today. He had been informed, as best as we could, that I had issued a dismissal order on the 11th of June, with respect to Zenitram's application, for a failure to prosecute. That also had been preceded by a ruling striking their integration statement, because it had been filed late.

1 And he was communicated with by my office,
2 and is not here. Zenitram is out of the case. Thus,
3 we are left with a two-party case.

4 The comparative -- there are two parties in
5 the case, and I know that we will get into some
6 discussion with respect to settlement possibilities.
7 There are comparative issues in the case, specifically
8 a coverage issue which is going to require a unified
9 engineer.

10 You gentlemen have filed a report with me,
11 that indicates that you do have a common engineer. You
12 are prepared to go forward on that basis.

13 The only thing that I have left is a site
14 change with respect to scheduling. In light of what I
15 learned yesterday about -- well, in light of two
16 things. In light of the fact that this is now a two-
17 party case, and a week ago it was a three-party case,
18 and that can make a big difference. And some
19 representations to me with respect to a good
20 possibility for settlement.

21 Who wants to discuss the possibility for
22 settlement?

23 MR. CARR: Well, Your Honor --

24 JUDGE SIPPEL: Mr. Carr?

25 MR. CARR: We think there is a possibility,

1 as we stated in the report. The parties had
2 previously, as I state in the report, gotten together
3 and reached agreement. And all of the settlement
4 documents were prepared.

5 And so we have completed settlement
6 agreements, joint motion, an escrow agreement. All of
7 those documents were prepared, with Zenitram included,
8 of course. We think there is now a chance, a good
9 chance, that Wolfe and LRB can reach settlement.

10 And since the documents would simply have to
11 be slightly reworked, that they could be filed promptly
12 if settlement can be reached.

13 JUDGE SIPPEL: Well, I would think that the
14 loss of Zenitram, that should exponentially increase
15 the possibilities for settlement. There's just going
16 to be less money involved.

17 MR. CARR: Well I guess the only problem is
18 the possibility of a petition for reconsideration by
19 Zenitram.

20 JUDGE SIPPEL: Well, he may very well
21 appeal -- well, he's not going to get reconsideration
22 here. But you mean an appeal to the Review Board and
23 up to the Commission?

24 MR. CARR: Yes.

25 JUDGE SIPPEL: Well, as I made it clear

1 yesterday, in telephone conversation with Mr. Gillick,
2 I am very much encouraging the parties to settle the
3 case. But I can't do it on a conditional basis. I
4 have been down that road before in another case, and it
5 doesn't work. It just doesn't work.

6 MR. CARR: When you say on a conditional
7 basis, are you saying that you would not be able to
8 approve a settlement which was dependent or contingent
9 upon final dismissal of Zenitram?

10 JUDGE SIPPEL: That's correct. That's
11 correct.

12 MR. CARR: And so what you are saying is that
13 Wolfe would have to take its chances on the possibility
14 of reinstatement of Zenitram?

15 JUDGE SIPPEL: On reinstatement of Zenitram,
16 and having to litigate, ultimately, against Zenitram.
17 Again, the nature of the dismissal, this to me does not
18 seem like it's going to be a close issue.

19 Otherwise, we would be talking, perhaps, in a
20 different context. But I think I'm -- and Mr.
21 Goldstein can correct me if I'm wrong, but I think I'm
22 stating what the Bureau's position certainly would be
23 with respect to this.

24 MR. GOLDSTEIN: It certainly is, Your Honor.
25 The comment that I would make on the situation, is it

1 is obviously a judgment call on the part of the
2 surviving applicant and his counsel. But if they had
3 been willing to pay a certain amount to the now-
4 dismissed party, it seems to me that they may want to
5 consider the fact of getting out of the case, and
6 ultimately getting their license without any fear of
7 reconsideration and having to re-litigate the case, may
8 be something that they would take under advisement, at
9 whatever terms they would want.

10 Once that there was an agreement, and once
11 there is an agreement to pay a certain amount of money,
12 or tentative agreement to pay a certain amount of
13 money, perhaps the dollar funds could be adjusted. But
14 the Bureau does not get involved in that.

15 It seems to me to avoid the problem of having
16 this thing hanging over their head for the next
17 extended period of time, they would consider something
18 like that.

19 JUDGE SIPPEL: That's a possibility, too.

20 MR. CARR: That is certainly a possibility.
21 And I would certainly discuss that with Mr. Wolfe, to
22 see if he would be willing to perhaps make another
23 offer to Zenitram in order to avoid any petitions or
24 any requests for appeal.

25 JUDGE SIPPEL: That would certainly be up to

1 you. As I say, I think it's a clear call. I don't
2 think that there's going to be any great law made out
3 of this. But I understand where the pressure points
4 are. And your client certainly understands it better
5 than I do.

6 But what I want to do is to keep this case on
7 schedule, but at the same time I want to be reasonable
8 about this, because I'm convinced that it's going to
9 settle out.

10 So I'm going to take it incrementally. The
11 first thing I'm going to do is I'm going to cancel the
12 admission session for the 26th of August. And I'm
13 going to also -- I'm not changing this dramatically,
14 but I'm also going to cancel the September 1 hearing
15 date. And I'm going to move everything, that is
16 admission session followed by testimonial hearing, I'm
17 going to move it up one week to September 8th.

18 Now with that, what I'm expecting is going to
19 happen in the next month or so, I'm going to get
20 something definitive on a settlement, and I'll be able
21 to then postpone the hearing indefinitely. But I need
22 to keep the case on track, in light of the time
23 requirements that we now have. And I do happen to have
24 that opening of September 8th.

25 So I'll issue an order at the conclusion of

1 today's session, rescheduling those dates, and I will
2 certainly indicate in the order that's in the
3 anticipation of a definitive universal settlement,
4 coming in within 30 days. Within 30 days, I either
5 want the settlement, or a status report which explains
6 exactly what is going on, and what the prospects are.

7 MR. CARR: I'm confident that we should know
8 within 30 days, Your Honor.

9 JUDGE SIPPEL: All right. And I'm going to
10 suspend all the other procedural dates, in terms of
11 engineering, and so on. And I'll give you 30 days to
12 get this thing in shape. And if it doesn't go in 30
13 days, or if something falls apart, then you'll have to
14 explain to your clients that they are going to have
15 bear the burden of playing catch-up to get all that
16 stuff together, to get the evidence together, to get
17 the engineering together, the exchange, etc.

18 Does the Bureau have any objection to that?
19 I just can't see putting anybody in a bind.

20 MR. GOLDSTEIN: No, sir.

21 JUDGE SIPPEL: Because, theoretically, you
22 would get your engineering review a little bit later
23 than you would need.

24 MR. GOLDSTEIN: With respect to the
25 engineering, I haven't looked it over. But it's

1 conceivable that they could stipulate as to that also.

2 MR. CARR: We don't have an engineering
3 report. That's the plan is to proceed in that manner.
4 It is not complete. We don't have a completed report
5 to hand to anyone.

6 MR. GOLDSTEIN: You don't have a preliminary
7 report? Nothing at all? I mean, it's conceivable that
8 the whole issue could be washed.

9 MR. CARR: That could be stipulated.

10 JUDGE SIPPEL: That could be stipulated. But
11 my requirement for stipulation is that you have to have
12 an affidavit from an engineer saying that there is no
13 issue, or there is no substantial issue.

14 MR. CARR: Yes, Your Honor. That would be
15 the way we would proceed.

16 JUDGE SIPPEL: All right. Then is there
17 anything else that anybody wants to talk about this
18 morning?

19 MR. CARR: No, Your Honor.

20 MR. GOLDSTEIN: I don't have my notes in
21 front of me. What is the status of issue no. 1, the
22 environmental impact statement?

23 JUDGE SIPPEL: Everything is out of the case.
24 I mean, all the technical issues are out of the case
25 now.

1 MR. CARR: Is that the Wolfe issue?

2 MR. GOLDSTEIN: Wolfe or Zenitram, yes.

3 JUDGE SIPPEL: Well, Zenitram's issue isn't
4 going to get acted on.

5 MR. GOLDSTEIN: Yes, but Wolfe one.

6 MR. CARR: The Judge has issued an order on
7 that.

8 JUDGE SIPPEL: Oh, yes.

9 MR. CARR: We filed an amendment to respond
10 to that.

11 MR. GOLDSTEIN: Yes, I have it here. Right.
12 May 28th.

13 JUDGE SIPPEL: And there was another
14 technical amendment, too, with respect to identifying
15 the site contact. And that's been cleaned up.

16 MR. CARR: That's been cleaned up.

17 JUDGE SIPPEL: So this case is in great shape
18 to move out of here by settlement. All right?

19 MR. CARR: It is, Your Honor.

20 JUDGE SIPPEL: All right. Then we are in
21 recess until September 8th, and I'll carry forward as
22 I've indicated on the record. Thank you.

23 (Whereupon, at 9:15 a.m., the above conference was
24 in recess.)

25

C E R T I F I C A T E

This is to certify that the attached proceedings
before the FEDERAL COMMUNICATIONS COMMISSION
in the matter of: BROCKPORT, NEW YORK

Docket Number: 92-61

Place: Washington, D.C.

Date: June 16, 1992

were held as herein appears, and that this is a true
and accurate record of the proceedings.

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